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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,138	02/08/2002	Megan N. Schlegel	0112300-742	3115

29159 7590 02/10/2004

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EXAMINER

MOSSER, ROBERT E

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,138

Applicant(s)

SCHLEGEL ET AL.

TR

Examiner

Robert Mosser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2,4,5,6</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
2. Claims 1, 4, 5, 8, 9, 15, 33 and 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Lynn (US 6,595,859).
3. Regarding claim 1, 4, 33, and 34 Lynn teaches the use of a display device (Col 2:50-51), a server understood as containing a processor from figure 1 for functionality connected to the display device through the internet (See Figure 1), and a target set including a plurality of player selectable symbols or numbers (image areas) including at least one randomly selected target symbol (Col 1:59-61) wherein the selection of the player is compared to a record of target symbols and a prize is awarded and indicated for the selection of a target symbol if selected (Col 1:43-61). Lynn further teaches either displaying through the display device an award winning result screen or a non-winning result screen (relationship indicator) including a hint as to the location of the target symbol dependent on the users symbol selected (Col 4:39-42 & Figure 1).
4. Regarding claim 5, Lynn demonstrates an indication of a player getting closer to a target symbol (Figures 1, and 6) and the indication that the player has chosen the

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winning symbol. This reads on including a plurality of relationship indicators, which identify the relationship between the target symbol and the symbol chosen by the player as presented.

5. Regarding claims 8 and 9. Lynn demonstrates the presence of multiple targets each with an assigned dollar value (Figure 3, Elm 85), which provides an award equal to the value of the selected target symbol as so claimed.

6. Regarding claim 15. The probability of an item being selected with the number of selection choices is an incorporated feature of any selection game containing a fixed selection set and as such implicit to the functionality of the game of Lynn.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lynn (US 6,595,859 in further view of Heidel et al (US 5,342,047)

10. Lynn is silent on the inclusion of buttons in a mechanical embodiment as understood, however Heidel teaches the inclusion of mechanical buttons wherein each button corresponds to each of said player selectable symbols in a target set thus allow the player to select symbols (Fig 1, elm 32). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the buttons of Heidel et al in the invention of Lynn in order to accelerate game play as taught by Heidel et al (Col 1:34-43).

11. Claims 3, 6,7,10-12, 14, 17, 18, 20-23, 25, 27, 29-31, 35, 36, 38, 43-53, 61, 63 and 64, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynn (US 6,595,859 in further view of Gura (US 6,159,097).

12. Regarding claim 3 and in addition to the above stated. Lynn is silent regarding the use of a touch screen, however Gura teaches the use of a touch screen in a selection game (Col 3:3:10-11). It would have been obvious to one of ordinary skill in the art at the time of invention to have used the touch display of Gura in the invention of Lynn in order to allow users to utilize their personnel touch screen monitors in the play of the game.

13. Regarding claims 6, 7, 20, 29-31, 35,49, and 50, and in addition to the above stated Lynn is silent on limiting the number of picks or awarding a different prize based

on the number of picks remaining after locating the target symbol in the target set, however Gura teaches the limiting of the number of randomly predetermined picks (Col 5:51-6:1) and increasing the value of the reward based on the number of picks remaining (Fig 10). It would have been obvious to one of ordinary skill in the art at the time of invention to have limited the number of picks the user may make and award the player based on the number of picks remaining as taught by Gura in the game of Lynn in order limit the amount of play time per game while adding an additional enticement of the game with the prize modifier.

14. Regarding claims 17, 18, 25, 36, 38, 43, and 45 and in addition to the above stated. The equal probability of a symbol being selected with a number of selection choices and a symbol selector in communication with said processor (as discussed in at least claims 17, 43, and 45) are considered functional features of a computer selection game and as such required for the functionality of the game of Lynn

15. Regarding claims 10-12, 14, 21, 23, 27, 44, and 46-48, and in addition to the above stated. Lynn includes at least one target symbol in his set as so claimed, but is silent on the inclusion of multiple target sets or the generation of an award based on the combination of awards associated with multiple targets from multiple sets. Gura however, does teach the generation of an award based on the combination of awards associated with multiple targets (with associated award value) from multiple sets and hence multiple target sets (Col 6:28-58). It would have been obvious for one of ordinary skill in the art at the time of invention to have incorporated the multiple target sets and associated features found in the game of Gura in the game of Lynn in order to

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allow the users to proceed through multiple prize levels and retain user interest as shown by Gura (Fig 10 and 11).

16. Regarding claims 27 and 47 in addition to the above stated. The processor and the symbol selector in communication with said processor as is considered a feature required the functionality of a computer symbol selection game such as the one presented by Lynn.

17. Regarding claim 22, in addition to the above stated. Lynn allows the player to play indefinitely and accrues the awards as they are won (Elm 84, 85). This reads on basing an award on the target symbols selected by the player in each of said target sets using all of the number of picks wherein the number of picks is understood as being limited by the player.

18. Regarding claim 48 and in addition to the above stated. Lynn allows the player to play indefinitely and accrues the awards as they are won (Elm 84, 85). This reads on basing an award on the target symbols selected by the player in each of said target sets using all of the number of picks wherein the number of picks is understood as being limited by the player.

19. Regarding claims 41, 42, 51-53, and 61-62, in addition to the above stated. Lynn is silent on the awarding of the above-described free game however, guru teaches the awarding of a bonus game (Col 6:28-46). As understood the awarding of a bonus game in of itself specifies the claimed "less than a predetermined award level" and the description of a bonus game by definition defines one free game or equivalently a number of free games being only one game. It would have been obvious for one of

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ordinary skill in the art at the time of invention to incorporate the bonus game of Gura into the game of Lynn in order to offer the user a higher level of excitement as taught by Gura (Col 157-63)

20. Regarding claims 63 and 64, in addition to the above stated. Lynn teaches the use of the Internet for the operation of the gaming device (Col 3:43-65) which meet the use of the internet as a data network as so claimed.

21. Claims 16, 19, 26, 32, 37, and 54-60, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynn (US 6,595,859 in further view of Gura (US 6,159,097 in yet further view of Kamille (US 5,092,598).

22. Regarding claims 32 and 54-60, in addition to the above stated. The invention of Lynn/Gura is silent on providing an award for locating all the trigger symbols however Kamille discloses this feature in an equivalent lottery game (Figure 4). It would have been obvious for one of ordinary skill in the art at the time of invention to have awarded an additional prize for the location of all the target symbols as taught by Kamille in the invention of Lynn/Gura in order to draw greater user interest with the offering of a larger prize while minimizing the risk that this prize will be awarded as is well known in the art (Gura 4b).

23. Regarding claims 16, 19, 26, and 37, in addition to the above stated. The feature of differing probabilities of being selected associated with each symbol in a target set is understood as being a functionally required feature of symbol selection game that includes a fixed set size as demonstrated by Kamille. Specifically in figure 3 of Kamille

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the set size is fifteen symbols with only four of the symbols being defined as a target symbol as understood. Upon the instance of a player selecting their first selection the probability that their choice will a target symbol is $4/15$ or 26.67%. While the instance of the player selecting a second target symbol after correctly selecting their first is $3/14$ or 21.43%. The probabilities will alter in similar fashion with each subsequent selection and decrease for the correct selection.

24. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lynn (US 6,595,859 in further view of Gura (US 6,159,097 in yet further view of Kennard et al (3.825,255).

The invention of Lynn/Gura is silent on providing separate indicators for indicating that a target number is higher or lower then the selected number, however Kennard et al teaches the use of two separate indicators (92, 97) for indicating whether or not a number is higher or lower then the selected number. It would have been obvious for one of ordinary skill in the art at the time of invention to have incorporated the indicators of Kennard et al into the invention of Lynn/Gura in order to provide assist the player in locating the target image (symbol or number).

25. Claims 13, 24, 28, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynn (US 6,595,859 in further view of Gura (US 6,159,097 in yet further view of Walker et al (6.561,902).

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26. The invention of Lynn/Gura is silent on providing awards based on the order of selection of elements as claimed, however Walker et al discloses the this feature in a game with user selected elements (Col 3:14-20). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the ordered feature of Walker et al in the invention of Lynn/Gura in order to include an additional game goal to the player.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (703)-305-4253. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

REM


MARK SAGER
PRIMARY EXAMINER